



North Carolina

Human Resources Legal Fact Sheet

Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor, and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in May 2018, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.

ARE THERE NORTH CAROLINA STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday / Pay Rate ¹	YES	Must give employees written notice at the time of hire of their wages, the payday, and the place of payment. Employees must sign and date the notice. Must notify employees of <u>any changes in wage rates at least 24 hours in advance</u> , either through writing or in a posted notice in a conspicuous place at the worksite. Employers must also make the 'policies and practices relating to promised wages' available to employees. The law provides a few examples of how to achieve this, though employers are not limited to these options: an up-to-date employee handbook, a written statement of those policies, or providing employees with payroll records where the terms of payment are included.
Reporting ²	YES	<u>New hires</u> and rehires must be reported to the North Carolina Directory of New Hires within 20 days.

WAGES

TOPIC	ANSWER	DETAILS
Payday ³	YES	Must establish regular paydays. Paydays can be daily, weekly, bi-weekly, semi-monthly, or monthly. Bonuses and commissions can be paid as infrequently as annually, if specified in advance.
Final Pay ⁴	YES	<u>Final pay</u> is due on or before the next regular payday (i.e. the regular payday for the pay period in which employment ends). Bonuses, commissions, or other forms of calculation must be paid on the first payday that the amount becomes calculable after separation. Employers must mail the final paycheck if employees request it.
Overtime ⁵	NO	North Carolina overtime law does not apply to agricultural workers; federal rules may apply. Employers are encouraged to review the federal fact sheet.
Minimum Wage ⁶	NO	North Carolina minimum wage law does not apply to agricultural workers; federal rules may apply. Employers are encouraged to review the federal fact sheet.
Reporting Time Pay	NO	North Carolina law does not require reporting time pay, i.e. an employee is only required to be paid for actual hours worked.

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WAGES

(Continued)

TOPIC	ANSWER	DETAILS
Hours Worked	NO	North Carolina law does not explicitly define 'hours worked' for the purposes of wage payment. Employers are encouraged to review the federal fact sheet.
Pay Stub ⁷	YES	For each payday, employers must provide employees with an itemized statement of deductions. This can be done in writing, by electronic mail, or any other means that makes it possible for the employee to retain the information in written form.
Taxes and Withholding ⁸	YES	<p>Employers must <u>withhold North Carolina income tax</u>. Employers must give employees a statement of taxes withheld, like a federal Form W-2, 1099-MISC or 1099-R. More details.</p> <p>Employers must pay <u>North Carolina Unemployment Insurance</u> taxes if:</p> <ul style="list-style-type: none"> You paid cash wages to farm workers of \$20,000 or more in a quarter in either the current or preceding calendar year; OR, You employed ten or more farm workers for some part of a day in 20 or more weeks of either the current or preceding calendar year. <p>Certain family employment is excluded from coverage requirements (a parent employed by their son/daughter, a person employed by their spouse, or a child under 21 employed by a parent). Unemployment taxes are paid by the employer; they are not taken out of employee pay. You can credit the amount you pay to North Carolina in calculating how much you owe for federal unemployment taxes.</p>
Deductions ⁹	YES	<p>North Carolina's Department of Labor gives detailed guidance and examples on allowable wage deductions. Employers can deduct from wages:</p> <ul style="list-style-type: none"> When it is required by state or federal law (for example, income tax withholding) With written authorization from the employee when the exact dollar amount is known. The authorization must: (1) be signed on or before the payday; (2) indicate the reason for the deduction; (3) state the actual dollar amount or % of wages to be deducted. If the deduction is for the convenience of the employee, the employee must be given a reasonable opportunity to withdraw authorization. With written authorization from the employee when the exact dollar amount is NOT known. In this case, the authorization must: (1) be signed on or before the payday; and (2) indicate the reason for the deduction. Before the deduction is made, the employee must receive advance written notice of the actual amount that will be deducted and the fact that they can withdraw authorization. They must be given reasonable opportunity to withdraw the authorization in writing. <p>With the above written authorization AND with at least 7 days' advance written notice, employers can also deduct for cash shortages, inventory shortages, or loss/damage to property, except that when a separation occurs the seven-day notice is not required. If criminal charges are pursued against an employee, the employer can deduct for cash shortages, inventory shortages, or loss/damage without authorization – but if the employee is not found guilty, the employer must pay it back.</p> <p>Overpayment due to miscalculation or other bona fide error, wage advances at the employee's request, and the principal amount of a loan to an employee can be withheld from wages. Interest or other loan charges can only be deducted with the written authorization from the employee described above.</p>
Bonuses ¹⁰	YES	<p>The definition of wages under North Carolina law includes all compensation based on time, task, piece, job, day, or other basis of calculation, including bonuses. Any bonuses promised to an employee through a policy or practice is considered wages. Generally nondiscretionary bonuses are paid under an agreement and would be considered wages protected under state wage payment laws. Discretionary wages may not fall under this definition, depending on how they are distributed.</p> <p>A nondiscretionary bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals or a bonus for length of service) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee, and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.</p> <p>Employers must follow any written policy they have about paying bonuses.</p>



RECORD KEEPING

TOPIC	ANSWER	DETAILS
Payroll ¹¹	NO	Agricultural employees are not subject to the North Carolina wage law recordkeeping requirements; however, there are recordkeeping requirements under Unemployment Insurance law and federal law.
Personnel Files – Employee Access	NO	North Carolina law does not require private sector employers to grant employees access to their personnel file.
Unemployment Insurance ¹²	YES	<p>Employers subject to contributions must submit <u>quarterly wage reports</u>.</p> <p>Whether or not subject to North Carolina Employment Security law, every employer in North Carolina must maintain the following records for at least five full calendar years. They must be available for inspection by authorized personnel of the North Carolina Department of Employment Services. If records are kept outside of North Carolina, the employer may be required to pay the expenses and costs for the DES representative to travel outside of North Carolina to access the records. Electronic records are acceptable.</p> <p>For each worker:</p> <ul style="list-style-type: none"> • The employee’s name, address, and social security number. • Dates on which services were performed for the employer. • Actual number of hours worked each day and total number of hours worked each week. • Daily attendance records, including times the individual did not work for reasons other than lack of work. • The state or states in which they performed services • The beginning and ending dates worked. • The amount of wages paid for each payroll period or, if not paid weekly, then for each calendar. With this information, the date of payment must be specified along with any non-wage remuneration. • All other payments made to the employee including vacation pay, tips and the reasonable value of board and lodging or other remuneration for services. • If during any payroll period the individual worked less than full time, and, if so, the hours and dates worked. • Reasons for separation from work (if applicable). • Any contract between the employer and the worker • Federal and state tax returns for the periods the worker was employed. <p>Additional employer records:</p> <ul style="list-style-type: none"> • Records that establish ownership and any changes of ownership of the employer • Address of headquarters • Mailing address • Address at which the above employment records are available for inspection or audit by the DES. • Addresses of the owners, or, if a corporation or unincorporated organization, the addresses of directors or officers. <p>Upon request, employers must also be able to provide a job description of duties performed by an employee or group of employees (if the duties are the same across).</p>
Workers’ Compensation ¹³	YES	Employers must keep a record of all work-related injuries, illnesses, or fatalities.
OSHA	YES	North Carolina has incorporated the federal OSHA recordkeeping standard. See the federal fact sheet for more details on recordkeeping requirements.
Federal	YES	There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.

WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Bathrooms ¹⁴	YES	North Carolina has incorporated the federal Pasteurized Milk Ordinance (PMO). The PMO specifies that dairy farms have one or more toilets that are conveniently located, properly constructed, properly operated, and maintained in a sanitary manner.



WORKING CONDITIONS

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TOPIC	ANSWER	DETAILS
Working Hours	NO	<u>No max hour</u> or day requirements for adults in North Carolina.
Rest and Meal Breaks	NO	<u>Not required under North Carolina law for employees 16 years and older.</u> Employers who choose to provide rest and meal breaks must follow federal rules; see the federal fact sheet for more information.
Labor Relations ¹⁵	YES	Employees in North Carolina have the right to organize and bargain collectively through representation of their own choosing. But employees cannot be required to become or remain a union member or to pay membership dues as a condition of employment. Additionally, employers cannot be required to transfer funds to a labor union to pay for an employee's membership.
Whistleblower Protection ¹⁶	YES	North Carolina does not have a general whistleblower law, but it <u>prohibits retaliating against employees</u> for acting in good faith to file a claim/complaint, testifying, or initiating an investigation/inspection relating to employment discrimination, wage and hour law, OSHA, workers' compensation, National Guard reemployment rights, state pesticide law, or drug paraphernalia law.
Paid Vacation and Sick Leave ¹⁷	NO	Paid sick or vacation leave is not required under North Carolina law, but employers who choose to provide such benefits must follow <u>their written policy/contract</u> . Accrued wage benefits, like paid sick or vacation leave, are promised wages that must be paid according to any policy, agreement, or practice the employee has established.
Breaks for Nursing Mothers	NO	State law does not require workplace accommodations for employees that are nursing, but federal rules may apply. Employers are encouraged to review federal requirements in the federal fact sheet.
Pregnancy Accommodations and Leave	NO	State law does not explicitly address pregnancy accommodations or leave. Generally, pregnancy and related conditions must be treated the same as other temporary disabilities for employment-related purposes.
Family and Medical Leave	NO	North Carolina does not have a state-level family and medical leave law. Federal law requiring unpaid leave may apply depending on the size of the employer. Refer to federal fact sheet.
Military and other Service Leave ¹⁸	YES	Any member of the North Carolina National Guard or the National Guard of another state who, at the direction of a state's Governor, enters state duty, is entitled to unpaid leave and job reinstatement if called to active duty. Federal rules may also apply; refer to the federal fact sheet.
Crime Victim and Witness Leave ¹⁹	YES	North Carolina domestic leave law prohibits employers from discharging, demoting, disciplining, or denying a promotion to employees who take time off work to obtain or attempt to obtain relief from domestic violence (such as a protective order, filing a civil action, etc.). Employees must follow the employer's usual time off policies, such as for requesting it or documenting it, unless an emergency prevents the employee from doing so.
Jury Duty and Witness Leave ²⁰	YES	An employer cannot discharge or demote an employee for <u>responding to a jury summons or serving on a jury</u> . State law does not require employers to pay employees for time spent responding to a summons or serving on a jury.
Voting Leave	NO	State law does not require employers to give employees time off to vote.
School Activity Leave ²¹	YES	Employers must grant up to <u>4 hours of leave per year</u> to an employee who is a parent or guardian of a school-aged child so that the employee can attend or be involved at the school. The time of the leave has to be agreed upon by the employer and employee. And the employer may require the employee to submit a written request 48 hours ahead of time as well as proof from the school that the employee was involved at the school during the time of the leave. Leave can be unpaid.



HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination ²²	YES	<p>North Carolina law prohibits employment discrimination based on race, religion, color, national origin, age, sex, disability, sickle-cell trait or hemoglobin C, genetic testing/information, the lawful use of lawful products outside of work hours, AIDS/HIV (with restrictions). Applies to employers with 15 or more employees. For the purposes of lawful product use outside of work hours, applies employers with 3 or more employees. For the purposes of genetic testing/information and sickle-cell trait, applies to all employers.</p> <p>Employment discrimination means bias in hiring (including during interviews), promotion, job assignments, firing, pay, and other terms of employment.</p> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a discrimination complaint.</p>
Harassment/ Sexual Harassment ²³	YES	<p>Harassment is not explicitly addressed in North Carolina law. However, sexual harassment is generally considered a type of discrimination based on sex. Sexual harassment is unwelcome conduct. It becomes illegal when (1) employees have no choice but to tolerate the harassment if they want to keep their job; (2) it is so severe that a regular person would see it as intimidating, hostile, or abusive.</p> <p>Sexual harassment includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:</p> <ul style="list-style-type: none"> • <i>Engaging in such conduct is made an implicit or explicit term or condition of employment. Example: A newly hired milker is told that sexual jokes, touching and nude posters are just part of farm life and she should try to ignore it.</i> • <i>Acceptance or rejection of such conduct is used as the basis for an employment decision affecting an employee. Example: A manager tells a worker applying for a promotion that the job would be his if he just “treated her right.”</i> • <i>The conduct interferes with an employee’s work or creates an intimidating, hostile or offensive work environment. Example: One worker experiences repeated advances from another asking her for dates or “just to go out for drinks after work.” The worker says she isn’t interested, but the co-worker won’t take ‘no’ for an answer.</i> <p>It is illegal to retaliate against employees for filing or otherwise aiding with a harassment complaint.</p>
Forced Labor ²⁴	YES	<p>Human trafficking is illegal in North Carolina. Trafficking for labor means: recruiting, harboring, transporting, provisioning, or obtaining of a person by any means for subjection to forced labor, forced services, debt bondage, or slavery. More details.</p> <p>Employers should ensure they are carefully following all visa requirements or work agreements to avoid any inadvertent violations.</p>

CHILD LABOR

TOPIC	ANSWER	DETAILS
Child Labor ²⁵	YES/NO	<p>North Carolina child labor law does not apply to minors in agriculture, so federal rules apply. Employers should review the federal fact sheet.</p>



HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Workers' Compensation ²⁶	YES	<u>Agricultural employers</u> with 10 or more full-time non-seasonal agricultural workers must have workers' compensation coverage. Those with fewer employers can elect coverage. For employers that have coverage: <u>Employers must immediately report</u> to their insurance carrier any work-related injuries or illnesses that require the attention of the physician, whether or not a physician is actually sought. The employer or its insurance carrier must file a First Report of Injury Form (Form 19) with the N.C. Industrial Commission within 5 days of learning of an injury.
OSHA ²⁷	YES	North Carolina has an approved OSHA 'state-plan', which means it is at least as effective as federal OSHA. Similar to federal OSHA, North Carolina has a general duty clause that requires employers to provide employees a workplace free from recognized hazards that can cause death or serious physical harm. North Carolina has incorporated the federal OSHA Standards for Agriculture, the General Industry Standards that apply to agriculture, and the reporting/recordkeeping requirements. See the federal fact sheet for details on requirements.
Housing	YES/NO	North Carolina law does not explicitly address standards for permanent agricultural housing, though general landlord/tenant or public health laws may apply (Note: there is a <u>law for migrant labor housing</u> that would typically not apply to dairies). Employers should follow best practices when providing housing – which includes, at minimum, a written housing agreement and properly maintaining the facilities. The FARM HR Manual has guidance around best practices for agricultural worker housing.

References

1. N.C. Gen. Stat. §95-25.13; 13 N.C. Admin. Code 12.0804; 13 N.C. Admin. Code 12.0805
2. N.C. Gen. Stat. §110-129.2
3. N.C. Gen. Stat. §95-25.6
4. N.C. Gen. Stat. §95-25.7; 13 N.C. Admin. Code 12.0308
5. N.C. Gen. Stat. §95-25.14
6. N.C. Gen. Stat. §95-25.14
7. N.C. Gen. Stat. §95-25.13; 13 N.C. Admin. Code 12.0807
8. N.C. Gen. Stat. §105-163.2; §96-1(11)
9. N.C. Gen. Stat. §95-25.8; 13 N.C. Admin. Code 12.0305
10. N.C. Gen. Stat. §95-25.2; 13 N.C. Admin. Code 12.0307
11. N.C. Gen. Stat. §95-25.14; §95-25.15
12. N.C. Gen. Stat. §96-9.15; 4 N.C. Admin. Code 24D.0501 and 24D.0504
13. N.C. Gen. Stat. §97-92
14. 15A N.C. Admin. Code 18A.1201
15. N.C. Gen. Stat. §95-78 et seq.
16. N.C. Gen. Stat. §95-241
17. N.C. Gen. Stat. §95-25.12
18. N.C. Gen. Stat. §127A-201 et seq.
19. N.C. Gen. Stat. §95-270; 50B-5.5
20. N.C. Gen. Stat. §9-32
21. N.C. Gen. Stat. §95-28.3
22. N.C. Gen. Stat. §143-422.1 et seq.; §95-28.1 et seq.; §130A-148; §168A-1 et seq.
23. See above
24. N.C. Gen. Stat. §14-43.11
25. N.C. Gen. Stat. §95-25.14; §95-25.5
26. N.C. Gen. Stat. §97-2(1); §97-92; 04 N.C. Admin. Code 10A.0104
27. N.C. Gen. Stat. §95-129; 13 N.C. Admin. Code 07A.0301

